

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

FILED

SEP 14 2016

Clerk, U.S. District Court
District Of Montana
Great Falls

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

BRANDON LEE ROMERO,

Defendant/Movant.

Cause No. CR 15-19-GF-BMM
CV 16-99-GF-BMM

**ORDER DENYING § 2255 MOTION
AND DENYING CERTIFICATE OF
APPEALABILITY**

This case comes before the Court on Defendant/Movant Brandon Lee Romero's motion to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255. Romero is a federal prisoner proceeding pro se.

Romero asserts the Court lacked jurisdiction and trial counsel was ineffective because the United States did not prove the victim of his assault was an "Indian person" within the meaning of the Major Crimes Act, 18 U.S.C. § 1153. *See* Mot. § 2255 (Doc. 73) at 4 ¶ 12(a); Br. in Supp. (Doc. 74) at 2. The statute applies to "[a]ny Indian who commits against the person or property of another Indian *or other person*" an offense as further defined. 18 U.S.C. § 1153(a) (emphasis added). Under the jurisdictional statute governing Romero's case, see Indictment (Doc. 1) at 2; Judgment (Doc. 64) at 1, it does not matter whether the victim is an Indian. Romero admitted that he is an Indian person. *See* Plea

Agreement (Doc. 40) at 3 ¶ 4; Offer of Proof (Doc. 42) at 5. This admission satisfied the jurisdictional requirement.

“The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” Rule 11(a), Rules Governing § 2255 Proceedings. A COA should issue as to those claims on which the petitioner makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Because Romero’s motion is based on a misreading of 18 U.S.C. § 1153, he does not meet even the relatively low threshold required for a COA.

Accordingly, IT IS HEREBY ORDERED as follows:

1. Romero’s motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255 (Docs. 73, 74) is DENIED;
2. A certificate of appealability is DENIED. The Clerk of Court shall immediately process the appeal if Romero files a Notice of Appeal;
3. The Clerk of Court shall ensure that all pending motions in this case and in CV 16-99-GF-BMM are terminated and shall close the civil file by entering judgment in favor of the United States and against Romero.

DATED this 14th day of September, 2016.

A handwritten signature in cursive script, reading "Brian Morris".

Brian Morris
United States District Court Judge